IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10526 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIMLABEN SOMABHAI

Versus

VADODARA URBAN DEVELOPMENT AUTHORITY

Appearance:

MR S.H.Sanjanwala, Senior Advocate
with Mr. RS SANJANWALA for the Petitioners.
MR MD PANDYA for Respondent No. 1
Mr. Sharad B.Pandit with MR SHAILESH C PARIKH
for Respondent No. 2
Mr. L.B. Dabhi, ASSTT.GOVERNMENT PLEADER
for Respondent No. 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 20/02/2002

ORAL JUDGEMENT

By means of this petition, the petitioners have sought for a declaration that the reservation of the land of the petitioners bearing survey no. 122 admeasuring 1 Acre 3 gunthas and survey no.123 admeasuring 1 Acre 23 gunthas reserved under the final development plan prepared by the respondent no.1 Vadodara Urban Development Authority (VUDA for short) and sanctioned by the respondent no. 3 State Government under section 17 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Act) lapses and the lands of the petitioners are no more under reservation and for a direction to the respondents to treat the reservation of the land of the petitioners stated above reserved under the final development plan of by VUDA sanctioned by the State Government as having lapsed and de-reserved and not coming in the way of the petitioners to develop the said land on the basis that there is no reservation on the said land and for a direction to the respondents not to re-reserve the land under purported exercise of the powers under section 21 of the Act and putting the same land of the petitioners under reservation for Gujarat Housing Board being illegal, ultra vires and malafide and to treat the re-reservation as not effective and permit the petitioners to develop the land as if there is no reservation.

2. The petitioners are the owenrs of survey no. 122 admeasuring 1 Acre and 3 gunthas and survey no.123 admeasuring 1 acre and 23 gunthas. The said lands were reserved under final development plan prepared by the VUDA and sanctioned by the State Government under section 17 of the Act. The said development came into force from 25th January, 1984 and the period of 10 years expired on 25.1.1994. The petitioners asked the respondent nos. 1 and 2 either to acquire the lands under Land Acquisition Act or by private negotiations, but they have not done anything so far. Since the period of 10 years after final development plan is over, the petitioners served a statutory notice under sub-section (ii) of section 20 of the Act to the respondent nos. 1 and 2 on 23rd January, 1997. Even within the period of six months from the date of service of notice to the respondents, the respondents have not acquired the land or have not taken any steps for acquiring the afoersaid land for the public purposes as mentioned in the final development plan. The authorities have again reserved the lands of the petitioners for the same purpose by issuing another draft development notification. Hence, that draft development notification is illegal in view of

the statutory provisions of law. Hence, the petitioners have filed the present petition with the above prayers.

3. Affidavit-in-reply has been filed by the respondent no. 2 Gujarat Housing Board wherein it is stated that the land in question was reserved for public purpose for the Gujarat Housing Board in the earlier development. Gujarat Housing Board has taken steps for acquisition of the land under the provisions of the Land Acquisition Act from the year 1986. The Executive Engineer of the Board prepared and sent a proposal for the acquisition of the said land after making survey of the land by a letter dated 27th October, 1986 to the Superintending Engineer, Vadodara. The said proposal, after making clarification of finalising the proposal was sent to the Housing Commissioner, Gujarat Housing Board. It was clarified that certain aspects which were required by the Collector for acquisition proceedings were proposed. The Housing Commissioner sent a proposal for the acquisition to the Collector and the Collector forwarded the same to the Special Land Acquisition Officer by a letter dated 20th March 1990. The Special Land Acquisition Officer returned the said proposal to the Housing Commissioner requiring the Board to submit acquisition proposal in 5 separate sets so that each such set of proposal should not contain more than five survey numbers. The Special Land Acquisition Officer further required the Board to submit copies of the village form no. 7/12, 6 and 8/A alongwith land plans, demarcation certification, joint measurement sheet, no objection certificate from the District Social Welfare Officer. If the land under proposed land acqusition belonged to any Harijan, no objection certificate from the Chief Executive Officer, VUDA, Payment of valuation fees, resolution of the Gujarat Housing Board requesting the Special Land Acquisition Officer to acquire the land in question and undertaking for payment of cost of acquisition and sufficiency of funds for the said acquisitiobn and other matter. The Special Land Acquisition Officer directed that no objection certificate of the Competent Authority, Urban Land (Ceiling) should also be submitted by the Gujarat Housing Board. Thereafter, by a communication dated 17th May, 1990, the Executive Engineer, Gujarat Housing Board sent a letter to the Chief Executive Officer to issue urgently no objection certificate in respect of the land in question. The Executive Engineer also sent a letter to the Talati of Sevasi village to issue copies of village form nos. 7/12, 6 and 8A in respect of 98 survey nos. sought to be acquired and also to furnish particulars of Harijans owning any land covered in the

acquisition proposal. The Executive Engineer also addressed a letter dated 17.5.1990 to the Competent Authority and Additional Collector, ULC to immediately issue no objection certificate in respect of the land for which the process of acquisition was in progress. The Executive Engineer by his communication dated 8.4.1992 sent all necessary documents required by the Competent Authority, ULC and requested that no objection certificate be issued to the Gujarat Housing Board at the earliest so that the acquisition proceedings can be taken soon. The officers of all the offices of Executive Engineer have repeatedly personally contacted the Competent Authority and requested him to give no objection certificate and personally submitted on 6.8.1992 and 12.8.1992, copies of some documents which were earlier submitted and not traceable in the office of the Competent Authority. Hence, the Competent Authority was requested again to give no objection certificate at the earliest. The Competent Authority despite several efforts made by the Gujarat Housing Board did not send no objection certificate regarding the land in question within time. During that time, final development plan dated 25th January, 1984 came to an end on 25th January, 1994. Thereafter, revised development plan was again submitted showing reservation of the said land for the public purpose of Gujarat Housing Board. A notification about the said development plan was published on 20th October, 1994 under section 15 of the Act and after the final revised development plan, having been sanctioned by the State Government and coming into force with effect from 26.11.1996, efforts for urgent acquisition of the land were started. The Competent Authority, ULC was reminded again and again by the Executive Engiener to immediately send no objection certificate so that acquisition proceedings can go on. Ultimately, by a reminder dated 25th July, 1997 again the Competent authority was reminded to send no objection certificate for the purpose of stating acquisition proceedings of the land in question. The Executive Engineer was informed by the Additional Engineer that only after the receipt of no objection certificate from the Competent Authority, ULC, the acquisition proceedings can go further. The Chief Engineer of the Board by his leter dated 19th August, 1997 pointed out to the Section Officer of the Government Department that unless no objection certificate under the provisions of ULC is received by the Housing Board, the acquisition proceedings cannot go further as the same is required by the Special Land Acquisition Officer. For the purpose of starting acquisition proceedings and requested him for doing the needful in the matter. The Competent Authority, ULC vide order dated 30th September,

1997 required the Executive Engineer to furnish particulars of survey nos. of the village Sevasi forming zones of Vadodara Urban Development Plan so that he can forward proposal for no objection certificate to the Government. BY a communication dated 2nd October 1997, the Executive Engineer requested the Talati of the village to send copies of the village form nos. 7/12 of all survey numbers under the proposed acquisition. The Executive Engineer, addressed a letter dated 27th October 1997 to the District Inspector of Land Records requesting to give plans showing blockwise zones of the consolidated survey numbers of the village concerned. Thereafter, by a communidation dated 29th January 1999, the Executive Engineer submitted the land plan showing block numbers to the Deputy Town Planning Officer and requested him to give no objection certificate of zone survey regarding lands proposed to be acquired for the purpose of starting acquisition proceedings of the land in question. By a letter dated 23rd March, 1999, the Executive Engineer sent a check for Rs. 7850/- to the Deputy Town Planning Officer as fees for no objection certificate and zone certificate. The Executive Engineer sent a communication dated 13.6.1999 requesting the District Social Welfare Department to issue no objection as some Harijan owned a land proposed to be acquired and requested him to issue the said certificate at the earliest. The Chief Executive Officer, VUDA vide his letter dated 8.9.1999 sent to the Executive Engineer requiring no objection certificate and zone certificate and thereafter the District Backward Welfare Officer vide his letter dated 7.8.2000 informed the Executive Engineer that no objection certificate cannot be issued for the purpose of acquisition of land as some of the lands is owned by Harijans and they are cultivating the same. Ultimately, the Executive Engineer by his communicated dated 3.4.2000 submitted to the Collector, Vadodara, a proposal for acquisition of the land in question alongwith necessary documents in compliance with the requirement of the Special Land Acquisition Officer and requested him to forward the same to the Special Land Acquisition Officer. He by his letter dated 15.5.2001 returned the said proposal for acquisition to the Executive Engineer requiring him to send no objection certificate from the concerned Taluka Panchayat; no objection certificate from the competent authority, ULC and no objection certificate from the concerned authority if electric line is passing over the land in question, the agreement in triplicate for the acquisition of the land, certificate from the District Health Officer and no objection certificate from the municipal authority and certificate from the Gujarat Housing Board regarding availability of sufficient fund,

demarcation certificate, certificate to the effect that thelands in question are open and without encroachment, no objection certificate from Social Welfare Department etc. The Executive Engineer vide his letter dated 18.6.2001 requested the District Health Officer to give a fresh no objection certificate. Fresh certificate was alsorequired by the Special Land Acquisition Officer. The Executive Officer addressed a letter dated 3.7.2001 to the Land Acquisition Officer giving detailed explanation regarding all the requirements set out in the letter dated 15.5.2001 and re-submitted the acquisition proposal. The Special Land Acquisition Officer vide his letter dated 5.9.2001 again returned the aforesaid proposal to the Executive Engineer of the Board to comply with further requirements mentioned therein. The Executive Engineer by a communication dated 26.12.2001 sent a letter to the Special Land Acquisition Officer explaining with regard to each of the said requirement and submitted the proposal once again. All the communications starting from 1986 to December, 2001 to show that Gujarat Housing Board has taken all necessary steps to acquire the land in question.

4. The learned counsel for the respondent no.2 Board also referred the asserations made in para-6 of the affidavit-in-reply wherein ti is stated that the proceedings for acquisition of the land could not be commenced within a period of 10 years from the date of commencement of the earlier development plan because of reasons beyond the control of Gujarat Housing Board. The Board initiated steps for acquisition of land since 1986, but endless queries and requirements of Land Acquisition Officer, delay in getting no objection certificate from various authorities, collection of a heap of documents from different bodies and authorities in compliance with the requirements of obtaining the said no objection certificate and even after complying with the requirements required by the Land Acquisition Officer and submitting proposal with all required information and documents, the Land Acquisition Officer returned the said proposal with further bundles of requirements. Thus, the acquisition proposal was submitted three times to the Land Acquisition Officer. Time and again the deponent of the affidavit-in-reply was requested to give the certificate and every such time, he was required to submit new information or document. The Land Acquisition Officer told that unless the said objection certificates are produced, the acquisition proceedings will not be commenced and acquisition proceedings could not be commenced not because of lack of any efforts or financial constraints on the part of the Gujarat Housing Board, but

because of external factors beyond its powers.

5. I have heard the learned counsel for the parties at length. The contention of the learned counsel for the petitioner is that section 20 of the Act requires the area development authority or any authority for whose purpose the land is designated in the final development plan for any purposes specified in clauses (b), (d), (f), (k), (n) or (o) of sub-section (2) of section 12 may acquire the land either by agreement or under the provisions of Land Acquisition Act, 1894. Sub-section (ii) requires that if the land is not acquired under sub-section (1) of section 20 by an agreement within a period of 10 years from the date of coming into force of the final development plan or if the proceedings under the Land Acquisition Act, 1894 are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice, the land is not acquired, or no steps are commenced for its acquisition, the designation of the land shall be deemed to have lapsed. In the present case, the development plan was finalised on 25.1.1984 and the land of the petitioners stated above was designated for the public purpose and especially for Gujarat Housing Board and within 10 years till 25.1.1994, that land has not been acquired by the Board under the provisions of the Land Acquisition Act, 1894 either by the State Government or by the Gujarat Housing Board. Hence, the petitioners had served a notice to the authorities concerned on 23rd January, 1997 and six month thereafter expired on 23rd July, 1997. Within that period, no proceedings have been initiated under the provisions of the Land Acquisition Act, 1894. Hence, the land will be deemed to have de-reserved and reservation of that land shall be deemed to have lapsed. In this connection, he relied on the decision of the Division Bench of this Court in the case of Palitana Sugar Mills Pvt. Ltd. vs. State of Gujarat reported in 2001(2) GLH 294 wherein it has been held as under:

> "47. Section 20 which confers a valuable right on the land owner or person interested in it to insist on the authority to acquire the land for the purpose of town planning within a reasonable fixed period of ten years has to be so construed as to allow its operation in a given contemplated situation. The provision contained in section 20 cannot be construed in a manner that it would seldom be brought into operation or can be never brought into effect as and when the final

development plan is made subject to revision under section 21 of the Act. The object and intention behind on provisions similar to section 20 to give right to the land owner or person interested in it to serve six months notice to get the land dereserved have been examined by Supreme Court while interpreting provisions contained in section 127 of the Maharashtra Town Planning Act in the case of Municipal Corporation of Greater Bombay vs. Dr. Hakim Vadi Tenants Association AIR 1988 SC 233 (supra). In construing the said provision with manifest object in view it is stated :

"While the contention of learned counsel....it must be borne in mind that the period of six months provided by section 127 upon the expiry of which the reservation of the land under a Development plan lapses is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By [enacting section 127 the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual."

He also relied on the decision of this Court in the case of Surat Municipal Corporation and anr. vs. Bhikhabhai Morarbhai Patel and others reported in 1994(2) GLR, 947 wherein it has been observed that the question which arises is that merely on the grant of approval by the Government under section 78 of the Corporation Act, do the acquisition proceedings commence, as is sought to be contended by the learned counsel for the appellants, or even if they do commence, can the Corporation not consider the building plans on merits ? The approval, which is granted under section 78 by the passing of an order by the Government is nothing more than a decision to initiate acquisition proceedings. The Land Acquisition Act contemplates proceedings being initiated by the issuance of a Notificatin under section 4 thereof. When such a notice is issued, one of the incidents thereof is that, if the acquisition is completed, then the person whose property is acquired will get compensation with reference to the date of the section 4 thereof.

6. In another case in the decision of Bhikhubhai Shamaldas Patel and another vs. State of Gujarat reported in 1995(2) GLR, 1694 this Court has

taken a view that the learned counsel for the respondents have failed to show any provision in the Gujarat Town Planning and Urban Development Act, 1976, according to which the same land which is kept lying unused on the basis of the notification under 12(2) thereof may be re-included in the re-development plan so as to make the citizens deprived of their land decades after decades. If at all the land in question was to be made use of for the re-development, sufficient time was there at the disposal of the respondents to go ahead with the matter, but the respondents did not wake up from the slumber even after the service of the statutory notice under section 20(2) and, therefore, now the same land cannot be included in the re-development plan again so as to make the petitioners to wait for another ten years, more particularly when there is no authority of law for doing so. This Court has also taken a view in the case of Heirs and Legal Representatives of Prabhudas Ramdas Patel (since deceased) vs. Ahmedabad Municipal Corporation, Ahmedabad and another reported in AIR 1999, Gujarat, 1998 it has been observed that where land is reserved by Development Authority but is not acquired for the purpose within the stipulated period and the reservation under the plan has already lapsed and no new plan has yet come into force, there cannot be said to be any impediment for the authorities to consider the application for sub-division of said land among co-owners on merit solely on the ground that same is likely to be required or is being considered for reservation. The issue of permitting sub division amongst joint owners has no bearing on the question of ultimate intention of authority to acquire land for thepurpose for which it has been reserved. The division of land or for that matter any property amongst joint owners is merely an act of crystallisation and separation of existing interests. It does not result in creation of new interests. Section 20 does not in any way obstruct the cryustallisation and determination of existing rights.

7. On the contrary, the learned counsel for the respondent no. 2 contended that imposing of steps under sub-section (ii) of section 20 of the Act has to be construed giving it a wider meaning as the provisions of section 20(2) require that if within six months from the date of service of such notice, the land is not required or no steps are commenced for acquisition. Steps means, something is to be done by the authority concerned for acquisition of the land. It is not necessary that proceedings for acquisition must be taken or must be commenced under the provisions of the Land Acquisition Act. In the present case, the respondent no.2 has taken

steps from the beginning i.e. from 1984 and appropriate authority is not taking any interest and delaying the matter on one or the other ground requiring various certificates. As such, in the present case, it cannot be said that no steps have been taken by the authority concerned for acquisition of the property. Therefore, according to him, the petition deserves to be dismissed.

8. I have carefully considered the contentions of the learned counsel for the rival parties. The first part of sub-section (ii) of section 20 of the Act refers the proceedings under Land Acquisition Act. If the proceedings are not commenced within such period, the person concerned would have a right to serve a notice on the authority concerned requiring it to acquire the land. The second part of this sub-section (ii) refers to the steps for commencement of the acquisition. The contention of the learned counsel for the respondentn o.2 is that steps have been taken for its acquisition though the proceedings for acquisition have not been taken under the Land Acquisition Act, then the designation of the land will not lapse. But in the present case, we are concerned with the period of 10 years from 25.1.1984 to 25.1.1994. Within the said period of 10 years, communication took place between the authorities and no proceedings under Land Acquisition Act have taken place within a period of 10 years even after six months of service of the notice required under sub-section (ii) of section 20 of the Act. From the record, it appears that no steps have been taken for the acquisition of the land. Even if we assume for the sake of argument that steps for acquisition commenced, do not relate to the proceedings under the Land Acquisition Act, then also, from the record it does not appear that in the present case, any steps have been taken by issuing notification under section 4 of the Land Acquisition Act for commencement of proceedings by any of the respondent authorities for acquisition of the land in question. As such, as observed in the judgment reported in Palitana Sugar Mills (Supra), even if that be true, we need not go into niceties of law because there is nothing in the reply of the State Government in any of the petitions that any steps meaning the steps towards acquisition of land by agreement or under Land Acquisition Act have been taken by the State Government or the authorities within the statutory period of six months on the service of notice by land owners. As stated above, neither of the authorities has taken any steps within the period of six months from the date of service of notice for acquisition of the land in question and the reservation/designation of the land in question will be deemed to have lapsed and

will not be operative. The petitioners are entitled to proceed on the basis that there is no reservation or designation of the land in question for any specific period.

9. In view of the above discussion and well settled legal position of law, this petition deserves to be allowed and is accordingly allowed. The reservation/designation on the land in question is declared to have lapsed and shall not be operative. The petitioners are entitled to proceed on the basis that there is no reservation or designation of the land in question for any specific period. However, the petitioners are directed not to develop the land in question without express development permission from the authori
made absolute accordingly with no order as to costs.

10. In the last, the learned counsel for the respondent no.2 requested to stay the implementation and operation of this judgment for a period of six weeks to enable the respondent no.2 to file an LPA. I do not find any good reason for acceeding to the request made by the learned counsel for the respondent no. 2. Hence, the request is refused.

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